

1 Amend 2 Cal. Code Regs. Section 18225.7 to read:

2 § 18225.7. **Made at the behest of; Independent versus Coordinated Expenditures.**

3 (a) Application.

4 (1) The term “made at the behest” is used in three contexts in the Act: (i) for  
5 “contributions” and “expenditures” defined in Sections 82015 and 82025; (ii) for “independent  
6 expenditures” defined in Sections 82031 and 85500, to differentiate between expenditures that  
7 are made in coordination with a candidate or committee versus those that are made by a person  
8 independent of the candidate or committee; and (iii) for “behested payments” reports filed by an  
9 elected officer or a Public Utilities Commissioner who solicits funds for charitable, legislative or  
10 governmental purposes as specified in Section 82015(b)(2).

11 (2) The definition of “made at the behest” in subdivision (b) applies to all uses of that  
12 term in the Act. The provisions in subdivisions (c)-(f) apply for independent expenditures. Refer  
13 to Regulation 18215.3 for rules on reporting payments elected officers and Public Utilities  
14 Commissioners solicit for charitable, legislative or governmental purposes.

15 (b) Made at the Behest. “Made at the behest” of” a candidate or committee means made  
16 under the control or at the direction of, in cooperation, consultation, coordination, or concert  
17 with, at the request or suggestion of, or with the express, prior consent of the candidate or  
18 committee. Throughout this regulation, the terms “candidate” and “committee” include their  
19 agents, when the agent is acting within the scope of his or her agency. Such arrangement must  
20 occur prior to the making of a communication described in Government Code section 82031.

21 ~~(b) Expenditures “made at the behest of” a candidate or committee include expenditures~~  
22 ~~made by a person other than the candidate or committee, to fund a communication relating to one~~

1 ~~or more candidates or ballot measures "clearly identified" as defined at Title 2, California Code~~  
2 ~~of Regs. section 18225(b)(1), which is created, produced or disseminated,~~

3 (c) Independent vs Coordinated Expenditures. For purposes of Sections 82031 and  
4 85500(b), an expenditure is made at the behest of a candidate or committee, and is not  
5 considered independent, if the expenditure funds a communication that expressly advocates the  
6 nomination, election or defeat of a clearly identified candidate or the qualification, passage or  
7 defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a  
8 particular result in an election, and is made under any of the following circumstances:

9 (1) General Coordination. The expenditure is made at the request, suggestion, or  
10 direction of, or in cooperation, arrangement, consultation, concert or coordination with, the  
11 candidate or committee on whose behalf, or for whose benefit the expenditure is made. To be  
12 considered coordinated, such prearrangement must occur prior to the making of a  
13 communication described in Government Code section 82031.

14 (2) Involvement in Communication. The expenditure funds a communication that is  
15 created, produced or disseminated either:

16 (1) (A) After the candidate or committee has made or participated in making any decision  
17 regarding the content, timing, location, mode, intended audience, volume of distribution, or  
18 frequency of placement of placing the communication; or

19 (2) (B) After discussion between the creator, producer, or distributor of a communication,  
20 or the person paying for that communication, and the candidate or committee, regarding the  
21 content, timing, location, mode, intended audience, volume of distribution or frequency of

1 ~~placement of placing~~ that communication, which the results of which is in the parties agreeing on  
2 any of these topics.

3 (d) Expenditures Presumed to be Coordinated/Made at the Behest. In addition to the rule  
4 in subdivision (c) of this regulation, there is a presumption that an expenditure funding a  
5 communication that expressly advocates the nomination, election or defeat of a clearly identified  
6 candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a  
7 whole and in context, unambiguously urges a particular result in an election, is made at the  
8 behest of a candidate or committee and not independent of the candidate or committee on whose  
9 behalf, or for whose benefit, the expenditure is made, under any of the following circumstances:  
10 ~~An expenditure is presumed to be made at the behest of a candidate or committee if it is:~~

11 (1) Campaign Needs. The expenditure is ~~B~~based on information about the candidate's or  
12 committee's campaign needs or plans that the candidate or committee provided to the expending  
13 ~~person by the candidate or committee, such as information concerning campaign messaging,~~  
14 planned expenditures or polling data. ~~or~~ This includes information the candidate or committee  
15 provided to the expending person directly or indirectly.

16 (2) Agent. The expenditure is ~~M~~made by or through any agent of the candidate or  
17 committee in the course of the agent's involvement in the current campaign, ~~or.~~ For purposes of  
18 this regulation, the "current campaign" means the primary and general election for an elective  
19 office, and also means any special election and special runoff election for an elective office.

20 (3) ~~For a communication relating to a clearly identified candidate or ballot measure~~  
21 ~~when:~~ (A) Common Consultants. The person making the expenditure for a communication  
22 relating to a clearly identified candidate or ballot measure retains the services of a person such as

1 a political, media or legal consultant, or polling firm, who provides either the candidate or the  
2 committee supporting or opposing the ballot measure with professional services related to  
3 campaign or fundraising strategy for ~~that same election~~ the current campaign.

4 ~~(B)~~ (4) Republication. ~~(A)~~ The communication relating to a clearly identified candidate or  
5 ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part,  
6 a communication designed, produced, paid for or distributed by the candidate or committee, or  
7 uses video footage or outtakes posted online by the candidate or committee.

8 (5) Fundraising. The candidate who benefits from the expenditure has solicited funds for  
9 or appeared as a speaker at a fundraiser for the person making the expenditure in the course of  
10 the current campaign.

11 (6) Former Staff. The committee or other person making the expenditure is established,  
12 run, or staffed in a leadership role, by an individual who previously worked in a senior position  
13 or advisory capacity on the candidate's or officeholder's staff within 12 months prior to the  
14 current campaign.

15 (7) Candidate's Family. The committee or other person making the expenditure is  
16 established or run by an individual who is an immediate family member of the candidate.

17 (e) Expenditures Not Considered Coordinated/Made at the Behest. An expenditure is not  
18 considered to be coordinated or made at the behest of a candidate or committee based solely  
19 merely when on any of the following circumstances:

20 (1) Interview. A person interviews a candidate on issues affecting the person making the  
21 expenditure, ~~or~~

1           (2) Photograph or Press Release. The person making the expenditure has obtained a  
2 photograph, biography, position paper, or press release, ~~or similar material~~ from the candidate or  
3 the candidate's agents, ~~or~~

4           (3) Prior Contribution. The person making the expenditure has made a contribution to the  
5 candidate or committee, ~~or~~

6           (4) General Request for Support. The person making the expenditure is responding to a  
7 general, non-specific request for support by a candidate or committee, provided that there is no  
8 discussion with the candidate or committee prior to the expenditure relating to details of the  
9 expenditure, ~~or~~

10          (5) Meeting with Members or Employees. The person making the expenditures has  
11 invited the candidate or committee to make an appearance before the person's members,  
12 employees, shareholders, or the families thereof, provided that there is no discussion with the  
13 candidate or committee prior to the expenditure relating to details of the expenditure, ~~or~~

14          (6) Informed after the Fact. A person informs a candidate or committee that the person  
15 has made an expenditure, provided that there is no other exchange of information, not otherwise  
16 available to the public, relating to details of the expenditure, ~~or~~

17          (7) Expenditure Benefits Another Candidate or Committee. An expenditure is made at the  
18 request or suggestion of the candidate or committee for the benefit of another candidate or  
19 committee.

20          (8) Hyperlink. The communication includes a hyperlink to the committee website of a  
21 candidate or measure.

1 (f) Certain Committee Communications. Notwithstanding any other provision of this  
2 ~~section~~ regulation, if two or more committees exchange information between or among  
3 themselves, subsequent expenditures by each committee ~~shall~~ are not, merely by reason of that  
4 exchange, ~~be~~ considered to be coordinated with or “made at the behest” of<sup>2</sup> the other  
5 committee(s), where the committees are (i) all general purpose committees, (ii) all committees  
6 primarily formed to support or oppose the same candidate or candidates, or (iii) all committees  
7 primarily formed to support or oppose the same measure or measures.

8 (g) Coordinated Expenditures are Treated as Contributions. An expenditure that is made  
9 at the behest of or in coordination with a candidate or committee, is considered a contribution to  
10 the candidate or committee, unless it is otherwise exempted from the definition of “contribution”  
11 by any provision of the Act or its regulations. ~~Throughout this section the terms “candidate”~~  
12 ~~and “committee” include their agents, when the agent is acting within the course and scope of his~~  
13 ~~or her agency. The term “expenditure” refers to a payment defined as an “expenditure” by~~  
14 ~~Government Code section Section 82025 and Title 2, California Code of Regs. section~~  
15 ~~Regulation 18225. A determination that an expenditure has been “made at the behest of” a~~  
16 ~~candidate or committee does not establish that the expenditure is a “contribution” as defined by~~  
17 ~~Government Code section 82015 or Title 2, California Code of Regs. section 18215. However,~~  
18 ~~expenditures governed by Title 2, California Code of Regs. section 18550.1 may be treated as~~  
19 ~~contributions pursuant to the provisions of that section.~~

20 Note: Authority cited: Section 83112, Government Code.

21 Reference: Sections 82015, 82025, 82031 and 85500, Government Code.